

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

TOWN OF FRAMINGHAM REQUEST FOR)	
DETERMINATION OF RATES APPLICABLE TO)	D.T.E. 02-46
TRANSPORTATION AND TREATMENT OF SEWAGE)	
PURSUANT TO INTERMUNICIPAL AGREEMENT)	
)	

TOWN OF FRAMINGHAM'S MOTION TO STRIKE
LATE-DESIGNATED EXHIBITS

The Town of Framingham hereby moves to strike from Ashland's exhibit list those exhibits not designated one week prior to the June 18, 2003 evidentiary hearing, as required by 220 C.M.R. § 1.10(5)(a) and the Hearing Officer's May 21, 2003 Memorandum Regarding Evidentiary Hearing Procedure. In support of this motion, Framingham states as follows.

1. This matter is scheduled for an evidentiary hearing on June 18, 2003.
2. Ashland and Framingham filed preliminary exhibit lists on April 8, 2003, along with their proposed direct testimony.
3. 220 CMR 1.10(5)(a) provides that the parties shall give notice to the Department of any exhibits to be offered as direct evidence at least seven days prior to any scheduled evidentiary hearing. Further, the Hearing Officer in this matter advised the parties, by e-mail dated April 3, 2003 and in his May 21, 2003 memorandum, that the parties' proposed exhibit

lists had to be supplemented at least seven days prior to the hearing, or by June 11, 2003.

4. On June 11, 2003, Framingham filed a supplemental exhibit list with the Department, and served the supplemental exhibit list on Ashland. Framingham did not identify any new documents that had not already been provided in discovery.

5. Ashland did not identify any new exhibits on June 11, 2003.

6. On June 17, 2003, at 2:50 p.m., Framingham's counsel received an e-mail message from Ashland's counsel, filing an amended exhibit list identifying two documents never produced by Ashland in discovery - portions of a March, 1999 MWRA Report, and an Intermunicipal Agreement between the Towns of Westborough and Hopkinton. Ashland provided no reason for its failure to designate these two documents as exhibits in a timely fashion.

7. Given Ashland's extremely late designation of these two exhibits, Ashland should not be permitted to introduce these documents as evidence in this matter. Framingham's counsel does not even have a copy of the Westborough/Hopkinton IMA, and therefore will not be able to prepare Framingham's witnesses to testify regarding the IMA, or to cross-examine Ashland's witnesses about the IMA. Ashland's failure to notify Framingham of its intent to rely on this IMA until the afternoon before the hearing is particularly egregious where Framingham propounded a

specific information request to Ashland (FRA 1-6) asking Ashland to identify any Intermunicipal Agreements that supported its proposed cost-allocation methodology. Ashland failed to identify any such agreements.

WHEREFORE, the Town of Framingham respectfully requests that the Department preclude Ashland from offering as part of its direct case the documents identified on Ashland's exhibit list as proposed Exhibits ASH-17 and ASH-18.

Respectfully submitted,

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By its attorneys,

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